



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking on the
Commission's Own Motion to Assess and
Revise the Regulation of
Telecommunications Utilities.

R.05-04-005

Rulemaking for the Purposes of Revising
General Order 96-A Regarding Informal
Filings at the Commission.

R.98-07-038

RESPONSE OF PACIFIC BELL TELEPHONE COMPANY
D/B/A AT&T CALIFORNIA (U 1001 C) TO TURN'S APPLICATION
FOR REHEARING OF D.07-09-018

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October 29, 2007

Pacific Bell Telephone Company ("AT&T California") responds to the October 12, 2007, Application for Rehearing of D.07-09-018 by The Utility Reform Network ("TURN's Application"), pursuant to Rule 16.1(d) of the Commission's Rules of Practice and Procedure. As shown below, the Commission should deny TURN's Application.

TURN contends that the Commission "failed to proceed in a manner required by law when it unduly narrows the protest rights of interested parties pertaining to rate-related tariff filings."¹ More specifically, TURN claims the Commission acted unlawfully in determining that an advice letter increasing a rate for a service that has been granted full pricing flexibility by the Commission may not be protested on the grounds that the rate is unreasonable. Contrary to TURN's contention, it was entirely appropriate for the Commission to adopt advice letter procedures that preclude such protests as such procedures are based on, and fully consistent with, the Commission's findings and conclusions in Decision 06-08-030 (the "URF Phase 1 Decision").

In the URF Phase 1 Decision, the Commission determined that sufficient competition exists to discipline rates:

Review of the extensive record in this proceeding shows that Verizon, AT&T, SureWest, and Frontier lack the ability to limit the supply of telecommunications services in the voice communications market, and therefore lack the market power needed to sustain prices above the levels that a competitive market would produce.²

The Commission found "that this result holds throughout their service territories and for both business and residential services."³ The Commission, moreover, found the "arguments of other parties that contend there is little competition and that the incumbent carriers retain market power are unpersuasive" and are "not supported by the weight of the substantial record evidence. . . ."⁴ As a result, the Commission concluded that price regulation is no longer needed to ensure that prices are just and reasonable:

¹ TURN's Application, p. 2.

² D.06-08-030, *mimeo*, p. 265 (Finding of Fact 50), *see also id.* at 117.

³ *Id.* at 117. The Commission developed an extensive factual record through testimony, comments, workshops, and hearings. *See id.* at 13-30.

⁴ *Id.* at 124.

[W]e have reviewed the entire record on this matter and conclude that Verizon, SBC, SureWest, and Frontier lack market power in their service territories. *We, therefore, conclude that price regulation is no longer needed to ensure that prices are just and reasonable.*⁵

The Commission acknowledged its conclusion was also consistent with state and federal statutes that encourage reliance on competition to promote broad consumer interests.⁶ Indeed, as the Commission pointed out, "[c]onsistent with the Legislature's intent, the Commission, whenever possible, has relied on competition to ensure that rates are 'just and reasonable.'"⁷

In D.07-09-018, the Commission is merely conforming the advice letter process (which includes the appropriate protest grounds) to the policy conclusions reached in the URF Phase I Decision regarding the appropriate level of rate regulation. Precluding protests that challenge rates avoids relitigating the findings and conclusions the Commission reached in the URF Phase I Decision. TURN's application, which seeks the ability to lodge such protests, is in reality an improper collateral attack on the URF Phase I Decision.⁸

Moreover, contrary to the assertions that the Commission's determination of the appropriate advice letter process results in avoiding its statutory obligations, complaints filed with the Commission are still available, as D.07-09-018 recognizes. Section 451 does not require that challenges to a rate have to be available through protests to advice letters. In fact, it is perfectly consistent with the URF Phase I Decision to require challenges to rates to be made through

⁵ *Id.* at 132 (emphasis added).

⁶ *See id.* at 34-36.

⁷ *Id.* at 33.

⁸ *See, e.g., Re Pacific Gas & Elec. Co.*, Decision No. 92-02-078, *Order Denying Rehearing of Resolution G-2967*, 1992 WL 230570 (Cal.P.U.C. Feb. 20, 1992) ("PG&E's application for rehearing of Resolution G-2967 is yet another attempt to relitigate D.91-02-040 during the compliance phase. It is also an attempt to reargue the issue of taking, which the Commission rejected in D.91- 05-058. Public Utilities Code Section 1709 provides that 'the orders and decision of the commission which have become final shall be conclusive.' Thus this statutory provision bars PG&E from making such a collateral attack of D.91-02-040. (*See People v. Western Air Lines* (1954) 42 Cal.2d 621, 630; *City of Vallejo v. Pacific Gas and Electric Company*, Decision No. 85-07-030, 18 Cal. P.U.C.2d 374, *mimeo*, p. 7 (1985).) Thus, the instant rehearing application is without merit and is also denied on collateral estoppel grounds."); *see also* D.07-10-015, *mimeo*, p. 7.

complaints filed with the Commission, rather than protests to advice letters changing those rates because such "price regulation is no longer needed to ensure that prices are just and reasonable."⁹

Finally, TURN's claims (at 7) that this type of process is a departure from how the Commission regulated prices of nondominant interexchange carriers ("NDIECs") is wholly mistaken. From the very beginning, NDIECs' rates were not regulated by the Commission, leaving NDIECs the freedom to price as "their self-interests indicate..."¹⁰ In 1996, when the Commission opened local competition, it extended the same pricing freedoms to Competitive Local Exchange Carriers ("CLECs").¹¹ The pricing flexibility granted NDIECs and CLECs has now been extended to all carriers; thus, the protest grounds TURN desires are appropriately precluded, and TURN's challenges should be rejected.

Dated at San Francisco this 29th day of October 2007.

Respectfully submitted,

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⁹ D.06-08-030, *mimeo*, p. 132.

¹⁰ *Re Competition in the Provision of Telecommunications Transmission Services*, Decision No. 84-06-113, *Opinion*, 15 Cal. P.U.C.2d 426, 473 (June 13, 1984).

¹¹ *Re Local Exchange Competition*, Decision No. 96-03-020, *Opinion*, 169 P.U.R.4th 83 (Mar. 13, 1996).

CERTIFICATE OF SERVICE

I, Morena Lobos, hereby certify that I have this day caused a copy of the foregoing document, **RESPONSE OF PACIFIC BELL TELEPHONE COMPANY D/B/A AT&T CALIFORNIA (U 1001 C) TO TURN'S APPLICATION FOR REHEARING OF D.07-09-018**, to be served on all known parties to **R.05-04-005/R.98-07-038** who have posted e-mail addresses. Any party on the official Service List that has not provided the Commission with an electronic mail address was served by first class U.S. Mail, and/o messenger with a paper copy properly addressed to each party.

Dated this 29th day of October 2007 at San Francisco, California.

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